

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42849
Docket No. SG-43053
18-3-NRAB-00003-150205**

The Third Division consisted of the regular members and in addition Referee Patricia Bittel when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(BNSF Railway Company (Former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of A. Villarruel, for reinstatement to service with compensation for all lost wages, including overtime and skill pay, with all rights and benefits unimpaired, and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it issued the Claimant the harsh and excessive discipline of dismissal without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on September 6, 2013. Carrier's File No. 35-14-0012. General Chairman's File No. 13-039-BNSF-20-C. BRS File Case No. 15111-BNSF.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On August 19, 2013 the Claimant was assigned to install head bonds on new rail that had been cut in earlier by Maintenance of Way ("MOW") employees. To accomplish this, the Claimant obtained authority to foul track inside the "OS" at Cicero B. The next day Signal Supervisor Fike visually inspected the work performed by the Claimant, and determined that he had been working just outside the OS rather than inside. The Carrier alleged the Claimant lacked track authority for the location in violation of MWOR 6.3. Because the Claimant was under active review from a Level S record suspension, he was dismissed. The Organization protested the dismissal as unjust and the matter was processed to arbitration. The parties to said dispute were given due notice of hearing. This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The Carrier alleged Claimant's track authority did not cover the area where he was working, and argued this is undisputed. It points out that Signal Supervisor Fike testified the Claimant came to his office on August 22 and confessed to exceeding the limits of his authority. In its view, the red flags the Claimant claimed as protection were not the correct form of protection for the area.

The Carrier noted the Claimant made no mention of lone worker authority until hearing. It argued this is telling, and indicated the lone worker argument was nothing but an afterthought. If lone worker status actually existed, the Carrier argued, he would have said so when first asked about his authority. In addition, the Carrier contends the Claimant's use of a power tool impaired his vision, precluding lone worker status. The hearing officer found Claimant's assertions unbelievable, and the Carrier explained that this credibility finding cannot be altered by the Board.

The Organization asserted the Claimant was protected under MWOR 6.3.3 – Lone Workers. The Claimant maintained he had filled out a "*Statement of On Track Safety*," as required by that rule but did not produce it. In the Organization's assessment, this type of protection was in lieu of track and time and was fully

sufficient, voiding both the need for track and time and any perceived violation. It further noted the use of a power tool did not disqualify Claimant from having authority as a lone worker because his vision was not impaired by the shield.

The Organization maintained the incident was not as serious as the Carrier made it out to be. It noted the Claimant was only a few feet outside of his authority, and any train would have stopped well before reaching him. It concluded the discipline was unwarranted and excessive.

The Board sees no basis for overturning the Hearing Officer's credibility assessment. The Claimant made a contemporaneous assertion that he was relying on track and time authority from the dispatcher. Since the statement was made at the time of the incident of concern, it is relatively reliable in comparison with statements made after the passage of time. His contention regarding lone worker status strikes the Board as an afterthought, as opposed to status actually existing at the time.

Enforcement of MWOR 6.3 cannot reasonably depend on how far an employee is from his or her authorized limits; either you are inside your authorization or you are not. Otherwise, issuance of track authority would become meaningless and employees would have no way of knowing how far is too far to wander from a limit. The safety implications of breaching authorized limits cannot be exaggerated. The Carrier was reasonable in flatly enforcing this rule without hedging.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of January 2018.